

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 741 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 Yes, 2 to 5 No.

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STATE OF GUJARAT

Versus

CHAMANBHAI DHANJIBHAI

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Appearance:

MR.S.A.PANDYA, ADDL. PUBLIC PROSECUTOR for the  
appellant.

MR P.S. CHAMPANERI for the Respondents.

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CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 29/10/96

ORAL JUDGEMENT

The State of Gujarat has filed the present appeal challenging the judgment and order of acquittal passed by the learned Assistant Sessions Judge, Surendranagar in Sessions Case No.32/87 acquitting all the 58 respondent-accused for the alleged offences punishable under sections 147, 148, 149, 436 read with section 114, 323, 337 of the Indian Penal Code and section 135 of the Bombay Police Act.

It is the prosecution case that on 15-1-1986 at about 6.15 p.m., all the accused formed an unlawful assembly and went to the house of the complainant Vishnudas Kashiram, put the house and the Vada of the complainant to fire by sprinkling kerosene and thereby damaged the properties of the complainant and while doing so the accused also caused injuries to the complainant and other prosecution witnesses. It appears that the crowd dispersed only after the police party of Jorawarnagar Police Station came there and resorted to the firing. On the basis of the complaint, Ex.86, Jorawarnagar Police started the investigation into the offences and filed a chargesheet against the accused. As the offences were triable by the Court of Sessions, the learned Chief Judicial Magistrate, Surendranagar committed the case to the Court of Sessions, Surendranagar.

The learned Extra Assistant Sessions Judge framed the charge, Ex.3, against the accused to which the accused pleaded not guilty and claimed to be tried. The prosecution examined as many as 20 witnesses to prove its case against the accused. In the statements recorded under section 313 of the Criminal Procedure Code, Dhiru Tapu, accused No.56, has come out with a case that on the day of the incident he was in service in the Public Works Department at Surendranagar and had in fact stayed in the garage at Surendranagar. In support of his say, he has also produced a xerox copy of the logbook of the motor vehicle. Similarly, Laxman Bhagwan, accused No.58, in his further statement has also come out with the case that at the time of the incident he was in service in the Laxmi Cotton Mills at Surendranagar and he has also produced the register of the Mill to show his presence in the Mill. In substance, it is the say of the accused that they have been falsely involved in this case.

The learned Assistant Sessions Judge, after appreciating the evidence on record, by his judgment and order of acquittal acquitted all the accused, and hence, the present appeal.

It is an undisputed fact that complainant and his brothers on the one hand and the accused on the other were not on good terms and because of the enmity between them, number of cases have been filed against the accused by the complainant and his brothers and in the same way number of cases have been filed against the complainant and his brothers by the village people. It is also not in dispute that the attempts are being made by the

village people to get the possession of the premises occupied by the complainant and for that purpose certain proceedings were initiated which have resulted against the complainant. It is no doubt true that the complainant has in fact filed an appeal against the said order. It is also not in dispute that during the course of the incident in question, the prosecution witnesses as well as the accused sustained injuries. In light of these admitted facts, the evidence of the prosecution witnesses is required to be considered and appreciated.

In order to establish its case, the prosecution has mainly relied on the evidence of the complainant Vishnudas Kashiram at Ex.85, injured Dhirajram Kashiram, Ex.139 and Baldev Kashiram, Ex.142. Over and above these injured witnesses, reliance is also placed on the evidence of Police Constable Navalsinh Anandsinh, Ex.88, Head Constable Atmaram Punabhai, Ex.91 and Police Constable Jhinabhai Birjubhai, Ex.92, who, according to the prosecution, had witnessed the incident. The learned Judge has not believed the evidence of the complainant as well as the injured persons mainly on the ground that they are interested witnesses and, because of the enmity with the accused, they have tried to involve so many accused, as also on the ground that the time of the incident being the winter evening and after sunset, all the accused could not have been identified much less the part played by each one of them viz pelting of stones, causing injuries with weapons and putting the house of the complainant to fire could not have been properly visible. The learned Judge was also of the view that the evidence of the complainant and other witnesses is not acceptable on the ground that there is variance in their evidence. It is the case of the other prosecution witnesses that accused Dhiru Tapu put the house of the complainant to fire while such is not the case of the complainant in his complaint. Similarly, although it is the case of the other witnesses that the accused Dhiru Tapu, Savji and Janak Raiya were putting the Vada and the house of the complainant to fire, the said fact is not stated in the complaint. On the contrary, it is the specific case of the prosecution that they have not seen as to who put the properties to fire. As far as the evidence of the three Police Constables is concerned, who, according to the prosecution, are independent witnesses, the learned Judge has found variance in their evidence. According to the learned Judge, they have tried to help the complainant by giving all details about the incident by giving the names of the accused and the weapons used by each of the accused and the part played by them, which is not possible to give, especially when

they are not the residents of the village and they were posted to maintain law and order only a day or two before the date of the incident. These witnesses have, in fact, admitted that they were not knowing the accused by name and were posted recently at the village. In view of this admission, the learned Judge was of the view that the evidence of these three witnesses was obtained by the complainant. In any case, the evidence of these three police constables does not inspire any confidence. Considering the fact that much has been said by the prosecution witnesses against the accused Dhiru Tapu and Laxman Bhagwan regarding their presence at the place of the incident and the part played by them to which the said accused have produced defence witnesses with documents to show that they were not present when the incident took place, would certainly create a doubt regarding the version of each of the prosecution witnesses. These are some of the reasons given by the learned trial Judge while acquitting the accused. Considering the same, I am of the view that the same are not in any case unjust or perverse requiring this Court to interfere with the order of acquittal passed by the learned trial Judge. Even if the second view is possible, it is now well settled that this Court cannot substitute its own finding and convert the order of acquittal into an order of conviction. Since I am in total agreement with the reasoning given by the learned trial Judge, as held by the Supreme Court in State of Karnataka vs Hemareddy AIR 1981 SC 1417, it is not necessary for me to renarrate the evidence and to reiterate the reasons given by the trial Court while considering the order of acquittal.

In the result, this appeal fails and is dismissed.

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